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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
FIRST APPELLATE DISTRICT  
DIVISION THREE

In re Ta.M., a Person Coming Under the  
Juvenile Court Law.

HUMBOLDT COUNTY DEPARTMENT  
OF HEALTH & SOCIAL SERVICES,

Plaintiff and Respondent,

v.

To.M.,

Defendant and Appellant.

A145067

(Humboldt County  
Super. Ct. No. JV140023)

To.M., the adult sister of Ta.M., appeals from an order denying her Welfare and Institutions Code section 388 petition seeking to have Ta.M. removed from her current foster placement and placed in her care. Our review is limited to whether the juvenile court abused its discretion when it denied To.M.'s request. We conclude the court's decision was based on the evidence and thus within its broad discretion, and affirm.

**BACKGROUND**

Ta.M.'s parents and their seven children have a long history with child protective services. In the fall of 2013, during an investigation by the Humboldt County Department of Health and Social Services (the Department), Ta.M.'s mother (Mother) was instructed to keep Ta.M. away from Mother's boyfriend pending an investigation of sexual abuse allegations. Mother sent three of her children, including nine-year-old

Ta.M., to live with adult siblings in different counties. Ta.M. and her sister Destiny went to live with To.M. in Lake County. Lori, who was four or five years old, was sent to live with her sister Amber in Solano County, but in April 2014 she also moved in with To.M..

Lake County social services investigated and determined that Ta.M. was safe with To.M.. To.M. intended to file for guardianship. However, in January 2014 Mother picked Ta.M. up from school and brought her back to live with her and her boyfriend in Humboldt County, prompting a new referral based on information that Mother had a substance abuse problem and failed to protect Ta.M. from possible sexual abuse and to provide her with dental care. The Department filed a petition under Welfare and Institutions Code section 300, subdivisions (b) and (j)<sup>1</sup> alleging failure to protect and sibling abuse. Ta.M. was placed in a confidential foster home.

On February 26, 2014, the court sustained the allegations in the petition. The Department's disposition report dated March 25, 2014 stated that both To.M. and Amber had been identified as possible relative placements but "Amber, who provides care for [Ta.M.]'s youngest sibling, reported she does not have enough room for another sibling. [To.M.], who lives in Lake County, would not be approved by the Department based on a report by Gary R. Buchholz, Court Investigator for Lake County, who did not recommend that guardianship be granted to [To.M.] as she has no means of support, no vehicle, inadequate housing, and no definitive plan for the future care of [Ta.M.]" Buchholz's report, which was attached, also disclosed that To.M. lied to him when she denied she was intimately involved with Raymond A., a married man 50 years her senior who owned the motor home she lived in. Buchholz also reported that he had information suggesting To.M. was a minor when the relationship started.

Mother had a pattern of moving from county to county with her children. As of March 2014 there were open investigations in both Lake and Solano Counties based on allegations of neglect, substance abuse, unsafe housing, and inadequate supervision and medical care. At the disposition hearing in this case, the court was informed that six days

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<sup>1</sup> All further statutory citations are to the Welfare and Institutions Code.

earlier a visiting judge in Lake County had granted To.M. legal guardianship of Ta.M. despite Humboldt County's exclusive jurisdiction. All parties acknowledged the Lake County order was improper, and the presiding judge later instructed the court in Lake County to rescind it in deference to the proceeding in Humboldt County. The hearing was continued until May 13, when the juvenile court clarified its exclusive jurisdiction over Ta.M.'s case, declared her to be a dependent of the court, and ordered her removed from Mother's custody and placed in a suitable foster, relative or non-relative, extended-family-member home with reunification services to be provided for Mother.

During the first 12 months of the reunification period the Department reported that Ta.M. was on track developmentally and doing well in her foster placement. Her foster mother supported contact between Ta.M. and her siblings, and was willing and able to provide a permanent home for Ta.M. if reunification failed. Ta.M. was in fourth grade, performing at grade level in math and English, and was going to be enrolled in gymnastics and modern dance classes. She had formed a close relationship with her older foster sister "and they enjoy reading, writing, and being silly together." The social worker described Ta.M. as a "joyful[,] happy child."

The Department continued to recommend against a guardianship with To.M., for the same reasons as before: "she has no means of support, no vehicle, inadequate housing, and no definitive plan for the future care of [Ta.M.]" Mother's whereabouts were unknown. In February 2015, based on Mother's failure to participate in services or make progress in resolving the problems that led to Ta.M.'s removal, the Department recommended terminating her reunification services and setting a permanency planning hearing.

On April 1, 2015, To.M. filed her petition for modification under section 388 requesting that Ta.M. be placed in her custody. To.M. explained that she had moved to a larger home and acquired a car, and that she, Destiny and Lori all wanted Ta.M. to live with them as a family. To.M. felt that Ta.M. would be happier living with her family than being adopted by her foster mother. She wrote: "I am willing to do anything in my

power for them to grow up under the same household. I would go to the ends of the earth for my sisters.”

The Department opposed the petition. The social worker wrote in an addendum report that To.M. had lied and given inconsistent information to the court investigator and social worker, which made it “very difficult for the social worker to fully assess her to determine if she can provide [Ta.M.] with adequate and appropriate care and supervision.” The report described a family history of making “allegations of one sibling sexually abusing the other and that the children are told to make these allegations by their mother and/or father. [To.M.] and her siblings were raised with these values and [To.M.] is currently demonstrating the same behaviors of providing untruthful information and/or inconsistent information preventing them from making appropriate decisions or having appropriate boundaries. This also makes it difficult for the social worker, or other individuals, to assess what is true and what is false.” Specifically, in 2001 To.M. reported that her grandmother had previously molested her and that her father was molesting her siblings. Those allegations were determined to be inconclusive. In 2008, when To.M. was 17, her parents accused her of molesting Destiny. To.M. denied the accusation and said her parents made it up because they wanted her to move out of the house. In 2013 Ta.M. accused To.M. of hitting her and touching her “down there.” Ta.M. later denied that this occurred, and Destiny told a social worker the story “was a hoax to get [To.M.] in trouble because [To.M.] was trying to get custody of them.” In April 2015, after the Department opposed To.M.’s request for placement, To.M. reported that Ta.M. said her foster mother paid the other children in the home to beat her up and that her foster father got sexually aroused watching her. The social worker investigated these allegations and was unable to substantiate them.

The Department also expressed concerns about To.M.’s continuing “off and on” relationship with Raymond A., a married family friend in his seventies who had known To.M. since she was 16. To.M. initially lied to the Lake County investigator when she denied the relationship was romantic. The Department had concerns that the relationship

may have started before To.M. turned 18 and that Raymond A. was a controlling personality and possibly a sexual predator.

To.M. had recently moved into a two-bedroom mobile home she had purchased for \$500. She reported that she was working at a car lot and had an income of \$2000 per month, but she was unable to provide her work schedule or employer's address, and could not verify her income because she was paid "under the table." A neighbor helped her with childcare. To.M. visited Ta.M. on April 1, 2015, but had not been able to do so earlier because she did not have a car or gas money. The Department provided her with gas cards for visits.

The Department concluded that "[f]or permanency purposes, at this time, the Department does not recommend that [Ta.M.] be placed with [To.M.]. [Ta.M.] is currently in a stable home and has been doing well there for over a year. She has a great relationship with the foster parents. [Ta.M.]'s care providers are willing to keep her connected to her family so that she has an intact relationship with them and willing to drive [Ta.M.] to Lake County and/or Vallejo so that [Ta.M.] can visit her siblings. In the long-term, the Department feels that it would be in [Ta.M.]'s best interest to remain with the current care giver and be adopted. Given [To.M.]'s current situation, she has done well for growing up in a chaotic and dysfunctional family. It is apparent she loves and cares for her siblings and that she does not want to repeat her parents' cycle. The Department would need to further assess [To.M.] if Ta.M. were to be placed with her. [To.M.] would need to be truthful and willing to work with the Department. If she was deceptive in the past and still providing inconsistent information, then she would need to change this behavior so that the Department can complete a full assessment. Due to [To.M.]'s extensive child welfare history as the victim and her own childhood trauma, the Department would like to see [To.M.] engage in counseling to address these issues. She needs to be able to demonstrate she can protect [Ta.M.] from the mother and Mr. [A.]."

The modification petition and contested 12-month review were heard jointly on May 4, 2015. Ta.M.'s counsel informed the court that Ta.M. felt safe with To.M. and wanted to live with her sisters. But counsel also expressed concerns as to whether the

placement would be in Ta.M.'s best interest, primarily because of doubts about To.M.'s credibility and her relationship with Ronald A.

To.M., then 23 years old, had been Destiny's legal guardian for about a year and a half and was filing to become Lori's guardian. She testified that she had recently moved from Raymond A.'s motor home into a mobile home with two bedrooms, a dining room and a kitchen. Thirteen-year-old Destiny and six-year-old Lori shared the smaller bedroom, but if Ta.M. moved in To.M. would sleep on a sofa bed in the living room and give the bedrooms to the three girls. To.M. was also considering adding another room to the mobile home. Her relationship with Raymond A. was still "on and off."

Destiny and Lori were doing well in school. To.M. testified that she made sure the girls were up to date on their immunizations and dental care. She had taken a seven-week parenting course. She also recently made an appointment to start counseling because the social worker told her to, but she expressed ambivalence about whether she would benefit from it. She had been a full-time student at Yuba College and intended to eventually go back to become a nurse. She had recently quit her job at the car dealership and started working for In Home Support Services (IHSS) the previous month. Her income for April was approximately \$2,000, including about \$1,000 she received from her sisters' disability and welfare benefits. To.M. expected to work 50 hours per month at IHSS initially, but she hoped her hours would increase to 100.

To.M. said she was 18 when her relationship with Raymond A. began. She did not involve her sisters, and usually saw Raymond only in the mornings when they were in school. She testified that she lied about the relationship to keep Raymond's wife from finding out about it. Later, she told the truth.

When asked about the 2008 molestation charge, To.M. testified that when she was 17 years old her father or some other family member bribed Destiny to falsely accuse her because he wanted her out of the house. The accusation was found to be baseless, and To.M. was never charged with a crime.

The court ruled that the proposed change of custody was not in Ta.M.'s best interest. It acknowledged To.M.'s good intentions, but found that "the dynamics are such

that [it would be] very inappropriate to grant a 388 petition taking Ta.M. from her placement and placing her with [To.M.].” The court specifically identified concerns about To.M.’s crowded home conditions, and financial and credibility issues.

To.M. filed this timely appeal.

### DISCUSSION

“A juvenile court order may be changed, modified or set aside under section 388 if the petitioner establishes by a preponderance of the evidence that (1) new evidence or changed circumstances exist and (2) the proposed change would promote the best interests of the child. [Citation.]” (*In re Zachary G.* (1999) 77 Cal.App.4th 799, 806.) “It is not enough for a parent to show *just* a genuine change of circumstances under the statute. The parent must show that the undoing of the prior order would be in the best interests of the child.” (*In re Kimberly F.* (1997) 56 Cal.App.4th 519, 529, italics in original.) The petition is addressed to the sound discretion of the juvenile court, and its ruling will be disturbed on appeal only for clear abuse of that discretion. (*In re Jasmon O.* (1994) 8 Cal.4th 398, 415.) “As one court has stated, when a court has made a custody determination in a dependency proceeding, ‘ “a reviewing court will not disturb that decision unless the trial court has exceeded the limits of legal discretion by making an arbitrary, capricious, or patently absurd determination [citations].” ’ [Citations.] And we have recently warned: ‘The appropriate test for abuse of discretion is whether the trial court exceeded the bounds of reason. When two or more inferences can reasonably be deduced from the facts, the reviewing court has no authority to substitute its decision for that of the trial court.’ ” (*In re Stephanie M.* (1994) 7 Cal. 4th 295, 318–319.)

Although the court did not explicitly rule on whether To.M. had demonstrated changed circumstances, the record shows that since disposition To.M. had acquired more suitable housing and means of transportation. The critical issue, however, and the basis on which the court denied To.M.’s petition, was whether the proposed change of custody would serve Ta.M.’s best interests. The question we must resolve is thus whether the court’s determination that it would not exceed the bounds of reason. On this record, we cannot so find.

To.M. asserts that the court failed to consider the factors relevant to requests for relative placements enumerated in section 361.3, including the child's best interests; the wishes of the parents, relative and child; the placement of siblings in the same home; the relative's moral character; the child's relationship with the relative and the relative's ability to care for the child; and the safety of the relative's home. (§ 361.3, subd.(a).) Instead, she maintains, the court relied "almost exclusively" on her arrest records, her relationship with Raymond A., and the inappropriateness of her housing. However, the record does not support that characterization. There was ample evidence bearing on the factors specified in section 361.3, and no indication that the court did not give it due consideration. The court is not required to specifically discuss or make findings on each of the enumerated factors when it rules on a request for relative placement; rather, it "fulfills this obligation when it carefully examines and takes into account the factors stated." (*In re John F.* (1983) 150 Cal.App.3d 182, 185 [interpreting Legislature's enumeration of factors to be considered in making delinquency dispositions under § 725.5].) The record contains no indication that the court failed to do so.

To.M., understandably, emphasizes evidence that favors her placement request, while minimizing more negative information in the record. She thus stresses Ta.M.'s desire to live with her and her sisters, the siblings' close and loving relationship, and Mother's support of the proposed change. Moreover, To.M. maintains, the evidence establishes that she is financially able to provide for Ta.M. as well as Destiny and Lori, both of whom are thriving in her care, and that her home is clean, safe and large enough to accommodate all four of them. We do not doubt the strength of the sisters' family bond. Nor do we minimize To.M.'s truly impressive efforts to make a home for her sisters. But there is also evidence that supports the court's concerns that it was not in Ta.M.'s best interests to move from the care of her foster parents to To.M.'s. The court was reasonably troubled that To.M. had lied about her relationship with Raymond A., a much older man who had initiated a relationship with To.M. when she was in her teens, and was concerned about placing Ta.M. in a living situation where she could be exposed to him. The court also noted the crowded conditions in To.M.'s mobile home, her



uncertain financial status, and critical questions about her credibility arising from her admitted lies about Raymond A. The court also considered evidence that Ta.M. was thriving in the care of a prospective adoptive foster family that could offer her a permanent home and would continue to support her relationship with her siblings.

In sum, we have no reason to doubt that Ta.M. deeply loves To.M. and her other sisters, and that, despite her own difficult childhood, To.M. has gone to remarkable lengths to care for her younger siblings and provide them with a stable home. But the juvenile court had the difficult task of weighing the potential risks and benefits of placing Ta.M. with her sisters against those of maintaining her current foster placement. On this record, we cannot conclude the court's determination that To.M. did not show the modification would promote Ta.M.'s best interests was arbitrary, capricious, or patently absurd. Accordingly, we may not disturb it on appeal.

#### **DISPOSITION**

The order is affirmed.

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Siggins, J.

We concur:

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McGuiness, P.J.

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Pollak, J.

*In re T.M.*, A145067